

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

FREDERICK DEWAYNE MALONE,

Plaintiff,

versus

G. EKEKE, *et al.*,

Defendants.

CIVIL ACTION NO. 1:18-CV-99

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Frederick Dewayne Malone, an inmate confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the case be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received the Report and Recommendation, along with the record, pleadings, and all available evidence. Plaintiff filed letters which the court construes as objections to the magistrate judge's Report and Recommendation. The court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law.

Pursuant to Section 1915(g), prisoners who previously had at least three lawsuits or appeals dismissed as frivolous or for failure to state a claim may not proceed with a lawsuit on an *in forma pauperis* basis unless they are under imminent danger of serious physical injury. Plaintiff alleges he has not been provided with sufficient paper to file a state application for writ of habeas corpus and has been harassed by officers in the law library. The magistrate judge's recommendation for dismissal was based on the conclusion that three lawsuits or appeals filed by plaintiff had been

dismissed as frivolous or for failure to state a claim and plaintiff had not demonstrated he was in imminent danger of serious physical injury.

In his objections, plaintiff asserts that his claims are meritorious. However, he does not contend he is in imminent danger of serious physical injury or state he has not had three lawsuits or appeals dismissed as frivolous or for failure to state a claim. As a result, the magistrate judge correctly recommended that this lawsuit be dismissed.

ORDER

Accordingly, the objections filed by plaintiff are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment shall be entered dismissing this lawsuit.

SIGNED at Beaumont, Texas, this 18th day of April, 2018.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE